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5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE EASTERN DISTRICT OF WASHINGTON**

7 EDWARD AUSTIN BALES,

8 Plaintiff,

9 v.

10 JOHN DOES and JANE DOES,

11 Defendants.

NO: 2:15-cv-00162-JPH

REPORT AND RECOMMENDATION
TO DISMISS ACTION WITHOUT
PREJUDICE FOR FAILURE TO
PROSECUTE

12 Plaintiff, a federal prisoner housed at FCI Manchester in Kentucky, is
13 proceeding *pro se* and *in forma pauperis*. By Order filed August 3, 2015, the Court
14 granted Plaintiff leave to amend his complaint to identify Defendants upon whom the
15 complaint could be served. Plaintiff has filed nothing further in this action.

16 Plaintiff sought monetary damages, claiming that another prisoner inflicted harm
17 against him while he was housed at the Spokane County Jail in 2011. He asserts that
18 he was diagnosed with Post-Traumatic Stress Disorder (“PTSD”) in October 2013.
19 Although the Court found that Plaintiff’s allegations were sufficient to state a claim, he
20 failed to state his claim against anyone other than John and Jane Does. It is impossible

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1 for the U.S. Marshal to serve unidentified Defendants. Plaintiff was granted the
2 opportunity to cure this deficiency, but has filed nothing further.

3 Therefore, **IT IS RECOMMENDED** that this action be dismissed without
4 prejudice for failure to prosecute, pursuant to Fed.R.Civ.P. 41(b).

5 **OBJECTIONS**

6 Any party may object to a magistrate judge's proposed findings,
7 recommendations or report within fourteen (14) days following service with a copy
8 thereof. Such party shall file written objections with the Clerk of the Court and serve
9 objections on all parties, specifically identifying the portions to which objection is
10 being made, and the basis therefor. Any response to the objection shall be filed within
11 fourteen (14) days after receipt of the objection. Attention is directed to Fed. R. Civ. P.
12 6(e), which adds additional time after certain kinds of service.

13 A district judge will make a de novo determination of those portions to which
14 objection is made and may accept, reject, or modify the magistrate judge's
15 determination. The judge need not conduct a new hearing or hear arguments and may
16 consider the magistrate judge's record and make an independent determination thereon.
17 The judge may, but is not required to, accept or consider additional evidence, or may
18 recommit the matter to the magistrate judge with instructions. *United States v. Howell*,
19 231 F.3d 615, 621 (9th Cir. 2000); 28 U.S.C. § 636(b)(1)(B) and (C), Fed. R. Civ. P.
20 72; LMR 4, Local Rules for the Eastern District of Washington.

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1 A magistrate judge's recommendation cannot be appealed to a court of appeals;
2 only the district judge's order or judgment can be appealed.

3 **IT IS SO RECOMMENDED.** The District Court Executive is directed to enter
4 this Report and Recommendation, forward a copy to Plaintiff, and **SET A CASE**
5 **MANAGEMENT DEADLINE ACCORDINGLY.**

6 DATED October 6, 2015.

7 s/ James P. Hutton
8 James P. Hutton
9 United States Magistrate Judge
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